

AUGUST 22, 2000

IN RE: Application of Pathnet, Inc. for a Certificate) ORDER GRANTING
of Public Convenience and Necessity to) CERTIFICATE TO
Provide Resold and Facilities-Based Local) PROVIDE LOCAL
Exchange, Interexchange, and Exchange) EXCHANGE AND
Access Telecommunications Services in) INTEREXCHANGE
South Carolina.) TELECOMMUNICATIONS
) SERVICES

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Pathnet, Inc. ("Pathnet" or the "Company") for authority to provide facilities-based resold voice and data local exchange telecommunications services, intrastate interexchange telecommunications services, and exchange access telecommunications services within the State of South Carolina. The application was filed pursuant to S.C. Code Ann. Sections 58-9-280 and 58-9-520 (Supp. 1999), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed Pathnet to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Pathnet complied with this instruction and provided the Commission

with proof of publication of the Notice of Filing. A Petition to Intervene was received June 30, 2000, from the South Carolina Telephone Coalition ("SCTC").

On July 19, 2000, counsel for the SCTC filed with the Commission a Stipulation in which Pathnet stipulated that it would seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Pathnet provided written notice of its intent prior to the date of the intended service. Pathnet also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Pathnet agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Pathnet provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on August 9, 2000, at 2:30 p.m. in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided. Pathnet was represented by John J. Pringle, Esquire. Jocelyn D. Green, Staff Counsel, represented the Commission Staff.

Mary McDermott, Senior Vice President, General Counsel and Secretary of Pathnet, appeared and testified in support of the application. According to Ms. McDermott, Pathnet is a Delaware corporation that has received authorization to transact business within the State of South Carolina from the Secretary of State for South

Carolina. Pathnet's principal office is located in Reston, Virginia. Pathnet seeks authority to provide resold and facilities-based interexchange, local exchange, and exchange access services throughout the State of South Carolina. Specifically, Pathnet intends to offer (i) point-to-point private line services ranging from DS-0 to OC-n, using TDM technology; (ii) TDM-based special access services; (iii) data services, including digital subscriber line (xDSL) services; and (iv) exchange access services consisting of link and extended link (including transport services) connecting other telecommunications providers' switches to their end-users. Pathnet's fiber product line delivers bandwidth services, as well as dark or dim fiber to customers requiring dedicated network services. Pathnet offers telecommunications services to interexchange carriers, local exchange carriers, Internet service providers, Regional Bell Operating companies, cellular operators and resellers. At this time, Pathnet does not plan to provide voice-grade basic local exchange service to end-users.

Pathnet plans to provide service throughout the entire geographic area that exactly corresponds to the geographic boundary of the State of South Carolina, to the extent such area is authorized for competitive service, and therefore seeks statewide authorization.

Ms. McDermott testified, and the record reveals, that since mid-1998, Pathnet has provided private carrier transport service, primarily on an interstate basis, to existing telecommunications carriers in six states using a point-to-point digital microwave system and fiber optic network. She said Pathnet is certified in twenty-five states and has applications pending in a number of others. She offered that Pathnet is building a fiber optic network that extends from Florida to Charlotte, North Carolina. She stated that this

network runs through South Carolina, and ends in Charlotte, North Carolina. She said Pathnet intends to build from that fiber backbone to go into second and third-tier cities in South Carolina. Ms. McDermott defined a second-tier city as one that has a population of from one million people down to 250,000. She defined a third-tier city as one that has from 250,000 people, down to 75,000 people. Ms. McDermott said Pathnet has an interconnection agreement with BellSouth and plans to do caged collocation in the following South Carolina cities: Columbia, Greenville, Spartanburg, Anderson, Greer, and Aiken.

Ms. McDermott explained that because Pathnet is a carrier's carrier, it does not do any telemarketing. She said Pathnet will focus its marketing efforts to Internet service providers and other carriers by using a sales force out in the field and at carrier trade shows. Pathnet's customers with inquiries or complaints may reach Pathnet through its toll free telephone number 1-877-PATHNOC. Ms. McDermott is the Company's contact person for regulatory and customer matters. She can be reached at the Company's headquarters in Reston, Virginia.

With regard to Pathnet's technical abilities to offer the services it proposes to offer in South Carolina, Ms. McDermott and the record revealed that once a network is operational, Pathnet's twenty-four hour a day, seven day a week Network Operations Center (NOC) in Reston, Virginia, will begin monitoring each route. Ms. McDermott stated this Network Operations Center gives the carrier customer, on a real time basis, the ability to be able to monitor and look at all circuits, and to view the load and

troubleshoot. She testified that Pathnet will use subcontractors already certified by BellSouth to go into the caged collocation facilities.

Ms. McDermott described Pathnet's management team as having extensive experience in the telecommunications industry. She stated that Richard A. Jalkut, President and Chief Executive Officer, has over thirty years experience in the telecommunications industry. He most recently was President and Group Executive of NYNEX Telecommunications where he oversaw a team of more than 60,000 employees and more than \$12 billion in revenue. She testified that Robert A. Rouse is Executive Vice President, President of Network Services. She said Mr. Rouse joined Pathnet with over thirty years experience in the telecommunications industry, having spent seventeen years with Frontier, and twelve or thirteen years with MCI. The record reveals Gerry Sharp is Vice President and Chief Technology Officer for Pathnet. He has over eighteen years of telecommunications experience, most recently as Senior Director of Architecture and Strategic Planning with Intermedia Communications. Ms. McDermott has over seventeen years of legal experience in the telecommunications industry. She most recently served as Senior Vice President and Chief of Staff for Government Relations of the Personal Communications Industry Association.

With regard to Pathnet's financial resources, Ms. McDermott stated that Pathnet has access to the financing and capital necessary to conduct the telecommunications operations it proposes to offer in South Carolina. She acknowledged that Pathnet is still in a start-up mode and has \$140M in cash that is being invested in building the network. The record reveals Pathnet completed an equity infusion in March 2000 of \$250 million,

made up of \$68 million in cash and 12,000 route miles of right-of-way, 8,000 of which are exclusive. A review of the financial information filed with the application indicates a financially stable company as of December 31, 1999.

Pathnet requested waivers from certain Commission regulations and requirements. Specifically, Pathnet requested waivers from (1) any requirement found in Rule 103-610 that all records be kept within the State of South Carolina; and (2) the requirement found in Rule 103-631 to publish and distribute local exchange directories.

Upon certification from this Commission, Ms. McDermott warranted that Pathnet will abide by all the Rules and Regulations of the South Carolina Public Service Commission. Ms. McDermott affirmed that Pathnet would participate in support of universally available telephone service at affordable rates and that Pathnet would provide services which meet the applicable service standards of the Commission. Further, Ms. McDermott testified that the provision of local service by Pathnet would neither adversely impact the public interest nor would Pathnet's service adversely impact the availability of affordable local exchange service. Ms. McDermott offered that approval of Pathnet's application is in the public interest because consumers will receive increased choice, improved quality of service, and heightened opportunities to obtain improved technology in their homes and businesses. Further, market incentives for new and old telecommunications providers will be improved through an increase in diversity of suppliers and competition. Further, the granting of authority will offer increased efficiency of the state's telecommunications infrastructure.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Pathnet is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Pathnet is a provider of resold and facilities-based interexchange, local exchange, and exchange access telecommunications services, and Pathnet wishes to provide its services in South Carolina.
3. The Commission finds, based upon the evidence presented at the hearing, that Pathnet has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 1999).
4. The Commission finds that Pathnet's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 1999).
5. The Commission finds that Pathnet will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 1999).
6. The Commission finds that Pathnet will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by Pathnet “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Pathnet to provide competitive resold and facilities-based intrastate local exchange service in South Carolina. The terms of the Stipulation between Pathnet and SCTC are approved and adopted as a part of this Order, Exhibit 1. Any proposal to provide service to rural service areas is subject to the terms of the Stipulation. In addition, Pathnet is granted authority to provide intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. Pathnet shall only charge those rates and charges approved in its tariffs on file with the Commission, as provided in S.C. Code Ann Section 58-9-230 (Supp. 1999).

3. Pathnet shall file, prior to offering local exchange telecommunications services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

4. Any proposed change in rates for local telecommunications services must be made in compliance with S.C. Code Ann. Section 58-9-520 (Supp. 1999) and 58-9-540 (Supp. 1999).

5. With regard to the long distance service offerings of Pathnet, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

Pathnet shall not adjust its long distance rates below the approved maximum level without notice to the Commission and to the public. Pathnet shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for long distance services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

6. If it has not already done so by the date of issuance of this Order, Pathnet shall file its revised maximum long distance tariff and an accompanying price list within

thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. Pathnet is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. Pathnet shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Pathnet changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, Pathnet shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. Pathnet shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. Please refer to the Commission's Website www.psc.state.sc.us/forms for the annual report forms.

This two page report is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS".

12. Further, Pathnet shall file such other annual financial information as the Commission requires of competitive local exchange companies. This information includes annual reports and gross receipts reports. As the surveillance report, the annual report and the gross receipt report necessitate the filing of intrastate information, Pathnet shall keep such financial records on an intrastate basis as needed to comply with these reporting requirements. Please refer to the Commission's Website at www.psc.state.sc.us/forms for this four page report entitled "Annual Report for Competitive Local Exchange Carriers." This form shall be utilized by the Company to provide the Commission with annual financial information on the Company's intrastate operations.

13. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Pathnet shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Please refer to the Commission's Website at www.psc.state.sc.us/forms for this one page report. It shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the

representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

14. Pathnet shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

15. The Commission finds the reasoning behind Pathnet's requests for waivers of (1) Reg. 103-610 - maintaining books and records within the state, and (2) Reg. 103-631 - publishing its own directory reasonable and hereby grants the waivers of those specific regulations. Pathnet has indicated that its principal place of business is located in Reston, Virginia. The Company has indicated that it will make its records available for inspection upon request by the Commission. Pathnet shall make reporting requirements as required of all CLECs operating in South Carolina. Pathnet is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

16. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Pathnet to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be

operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Pathnet shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

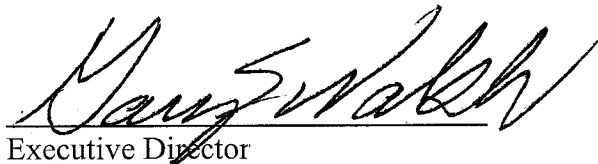
17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

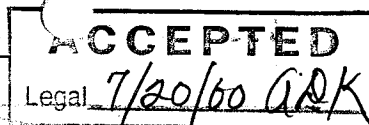


Chairman

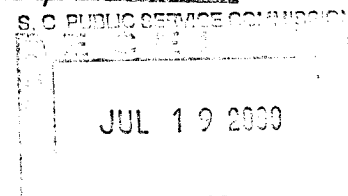
ATTEST:


Executive Director

(SEAL)



BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA



Docket No. 2000-0214-C

Re: Application of Pathnet, Inc. for a Certificate of)
Public Convenience and Necessity to Provide Resold)
and Facilities-based Intrastate Interexchange, Local)
Exchange, and Exchange Access Telecommunications)
Services in the State of South Carolina)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Pathnet, Inc. ("Pathnet") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Pathnet's Application. SCTC and Pathnet stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Pathnet, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Pathnet stipulates and agrees that any Certificate which may be granted will authorize Pathnet to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Pathnet stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Pathnet stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until Pathnet provides such rural incumbent LEC and the Commission with written notice of its

intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Pathnet acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Pathnet stipulates and agrees that, if Pathnet gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Pathnet will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Pathnet acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Pathnet, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Pathnet agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

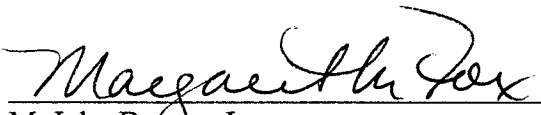
9. Pathnet hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 6th day of July, 2000.

Pathnet, Inc.:


Senior Vice President and General Counsel

South Carolina Telephone Coalition:


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Attorneys for the South Carolina Telephone Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company